

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JENNIFER PIGGOTT and
SLADE PIGGOTT,

Plaintiffs, and

HWASHIN AMERICA CORP.,
Intervenor Plaintiff

V.

GRAY CONSTRUCTION, INC.,

Defendant and Third-Party Plaintiff

V.

COOPER'S STEEL FABRICTORS,
INC., et. al.

Third Party Defendants.

**HWASHIN'S REPLY AND MOTION TO STRIKE A PORTION OF LATTA
PLUMBING & CONSTRUCTION CO., INC.'S BRIEF IN OPPOSITION TO
PLAINTIFFS' MOTION TO SEVER**

COMES NOW the Intervenor Plaintiff and alleged Third-Party Defendant, Hwashin American Corporation (“Hwashin”) and files its Reply and Motion to Strike a Portion of Third Party Defendant’s, Latta Plumbing & Construction Co.,

Inc.'s, ("Latta's") Brief in Opposition to Plaintiffs' Motion to Sever and states as follows:

A. **Motion to Strike Section IIA of Latta's Response to Plaintiff's Motion to Sever.**

On June 29, 2007, Hwashin timely filed a Motion to Amend its Complaint in Intervention in this matter (Document No. 55). On July 3, 2007, this Court issued an Order to Show Cause, ruling that all parties in the case had until July 13, 2007, to file a response as to why Hwashin's Motion to Amend its Complaint in Intervention should not be granted. (Document No. 68). On July 13, 2007, Gray Construction, Inc. ("Gray") filed its Response in Opposition to Hwashin's Motion to Amend its Complaint in Intervention. (Document No. 77)

Latta filed no response in opposition to Hwashin's Motion to Amend its Complaint in Intervention during the time period set by this Court. Rather, Latta waited until three months after the deadline passed to oppose Hwashin's motion in its opposition to Plaintiff's Motion to Sever (Document 153). All of the arguments propounded by Latta in Section IIA of its Brief in Opposition to Plaintiff's Motion to sever are untimely and should be stricken. Latta had ample opportunity to oppose Hwashin's Motion to Amend its Complaint in Intervention, failed to do so, and should not now be allowed to file such opposition couched in a response to another parties' motion. To allow Latta to make its argument at this late date

would render null and void any dealdine issued by this Court, not to mention result in predudice to Hwashin in relying on those deadlines.

B. Reply to Section IIA of Latta's Response to Plaintiffs' Motion to Sever.

Latta begins Section IIA of its brief by purporting to discuss alignment of the parties. Then, with no factual discussion and no citation to any legal authority, Latta states that Hwashin is aligned with the third party defendants, apparently because Gray chose to name Hwashin as a third party defendant.

In reality, alignment of the parties is much more complicated. The court bears the responsibility of inquiring into every suit filed in federal court and resolving jurisdictional issues, and the manner in which a party is characterized by others is not dispositive. *United States Fidelity and Guaranty Company, etc. v. Algernon-Blair, Inc., et.al.*, 705 F.Supp. 1507 (M.D.Ala. 1988). Rather, the court must look to see if there is actual or substantial controversy between parties in order to determine whether they are properly aligned as opposing parties in a lawsuit. Even if the parties are on different sides of a lawsuit, if their primary interests are the same, the court should realign them. *Federal Insurance Company v. Bill Harbert Construction Company, et.al.*, 82 F.Supp.2d 1331 (S.D.Ala. 1999).

The Court should look beyond the pleadings and align the parties according to their interests in the case, even if that party is a third party defendant. *See, e.g., Aetna Casualty and Surety Co., v. Dow Chemical Co.*, 440 F.Supp.2d 870 (E.D.

Mich. 1999), and *Butcher v. Hildreth*, 992 F. Supp. 1420 (D.Utah 1998) (where the court held that a third party defendant was an indispensable party that had to be aligned with the plaintiff due to the fact that his real interests in the case were the same as the original plaintiff's.)

In the case before this Court, Hwashin's interests in determining the cause of the roof collapse, the entity or entities responsible for the collapse and recovering the damages it suffered as a result are totally in line with the plaintiffs, as detailed by Hwashin in its Response to Gray's Opposition to its Motion to Amend its Complaint in Intervention (Document No. 79, pages 4-6). In fact, no party has contested the the fact that Hwashin's and the plaintiffs' interest are alike in this regard. Thus, this court should realign Hwashin with the plaintiffs, regardless of how it rules on the plaintiffs' motion to sever. As such, the plaintiffs still will not be granted the remedy that they seek, even if this Court grants their motion to sever.

This 31st day of October, 2007

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CERTIFICATE OF SERVICE

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by electronic filing on this the 31st day of October, 2007.

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